

Introduced by Senator Chesbro

February 20, 2004

An act to amend Sections 10136, 10138, 10139, 10139.1, and 10139.5 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1680, as introduced, Chesbro. Insurance: structured settlements.

Existing law permits a judgment awarded by a court for damages for personal injury in resolution of a tort claim, or an award for permanent disability for personal injuries subject to the workers' compensation law, to be paid in periodic payments rather than a lump-sum payment, which is known as a structured settlement. Existing law requires a transfer of structured settlement payment rights entered into on or after January 1, 2000, by a payee either domiciled in California or entitled to receive payments funded by an insurance contract issued by an insurer domiciled in, or owned by an insurer or corporation domiciled in, California to comply with specified requirements, including disclosure requirements. Existing law requires a copy of a transfer agreement to be filed with the Attorney General. Existing law provides that, until January 1, 2005, a transfer is not effective unless it has been approved in a final court order, and requires that, following a transfer, certain requirements be met, including a requirement that a transferee advise the payee of a right to seek counsel and that the transferee will pay the counsel's fee regardless of whether the agreement is approved. Existing law also requires, until January 1, 2005, that a transferee file a copy of the final court approval and other specified information with the Attorney General to within 30 days of obtaining final court approval, and requires the Attorney General to file a report, by March

31, 2004, with the Legislature to assist in the evaluation of the impact of these requirements.

This bill would delete the application of these provisions to a transfer by a payee who is not domiciled in California. The bill would require disclosure of the total amount the payee would receive under the settlement in the absence of the transfer. The bill would delete the January 1, 2005, repeal date for specified provisions. The bill would also require transferees to disclose that they will pay fees for a licensed certified public accountant or actuary and that payment of the professional is regardless of whether the professional files any document or appears at the hearing. The bill would delete the requirement that a transferee file a copy of the final court approval with the Attorney General within 30 days of obtaining final court approval and the requirement that the Attorney General file a report with the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10136 of the Insurance Code is
2 amended to read:

3 10136. No transfer of structured settlement payment rights,
4 either directly or indirectly, shall be effective by a payee domiciled
5 in this state, ~~or by a payee entitled to receive payments under a~~
6 ~~structured settlement funded by an insurance contract issued by an~~
7 ~~insurer domiciled in this state or owned by an insurer or~~
8 ~~corporation domiciled in this state~~, and no structured settlement
9 obligor or annuity issuer shall be required to make any payment
10 directly or indirectly to a transferee, unless all of the following
11 ~~subdivisions~~ *requirements* are satisfied met:

12 (a) Ten or more days prior to the effective date of a transfer
13 agreement, the transferee provides the payee with a separate
14 written disclosure statement, in at least 14-point boldface type,
15 disclosing all of the following *information*:

16 (1) The effective date of the transfer.

17 (2) The amounts and due dates of the structured settlement
18 payments to be transferred.

19 (3) The aggregate amount of the structured settlement
20 payments to be transferred.



1 (4) The gross amount of all expenses, if any, to be deducted
2 from the amount to be paid to the payee in exchange for the
3 payments to be transferred.

4 (5) The amount payable to the payee, net of all expenses, in
5 exchange for the payments to be transferred, *and the total amount*
6 *that the payee would receive under the structured settlement in the*
7 *absence of the transfer.*

8 (6) The discounted present value of all structured settlement
9 payments to be transferred and the discount rate used in
10 determining that discounted present value.

11 (7) The effective equivalent interest rate, which shall be
12 disclosed in the following statement:

13
14 “YOU WILL BE PAYING THE EQUIVALENT TO AN
15 INTEREST RATE OF ____ % PER YEAR.

16
17 Based on the net amount that you will receive from us and the
18 amounts and timing of the structured settlement payments that you
19 are transferring to us, if the transferred structured settlement
20 payments were installment payments on a loan, with each payment
21 applied first to accrued unpaid interest and then to principal, it
22 would be as if you were paying interest to us of ____ % per year,
23 assuming funding on the effective date of transfer.”

24 (8) The quotient (expressed as a percentage) obtained by
25 dividing the net payment amount by the discounted present value
26 of the payments.

27 (9) A statement that the payee should obtain independent
28 professional advice regarding any federal and state income tax
29 consequences arising from the proposed transfer, and that the
30 transferee may not refer the payee to any specific adviser for that
31 purpose.

32 (10) A statement of the payee’s irrevocable and nonwaivable
33 right of rescission pursuant to paragraph (2) of subdivision (b).

34 (11) The following statement in capital letters: “IF YOU
35 BELIEVE YOU WERE TREATED UNFAIRLY OR WERE
36 MISLED AS TO THE NATURE OF THE OBLIGATIONS YOU
37 ASSUMED UPON ENTERING INTO THIS AGREEMENT,
38 YOU SHOULD REPORT THOSE CIRCUMSTANCES TO
39 YOUR LOCAL DISTRICT ATTORNEY OR THE OFFICE OF
40 THE ATTORNEY GENERAL.”

1 (12) If court approval of the transfer agreement is required, all
2 of the following shall apply:

3 (A) The effective date of the transfer agreement shall be
4 deemed to be the date that the agreement was signed by the payee.

5 (B) The payee shall be advised that payment to the payee
6 pursuant to the transfer agreement is contingent upon court
7 approval of the transfer agreement.

8 (C) The payee shall be advised that payment to the payee
9 pursuant to the transfer agreement will be delayed up to 30 days
10 or more in order for the court to review and approve the transfer
11 agreement.

12 No contract for the transfer of structured settlement payment
13 rights shall be valid unless the seller has separately acknowledged
14 that he or she has read all of the disclosures required by this
15 subdivision.

16 (b) (1) The transferee provides written notice of the proposed
17 transfer to all other interested parties 10 or more days prior to the
18 date specified in the transfer agreement as the date on which the
19 transfer agreement first becomes ~~binding upon the payee~~ *effective*
20 and 60 or more days prior to the date on which the first payment
21 is due under a schedule established by the structured settlement
22 agreement.

23 Notice shall not be required by this paragraph if court approval
24 of the transfer is required and notice is given pursuant to paragraph
25 (6) of subdivision (c) of Section 10139.5.

26 (2) At any time prior to the date on which the transfer
27 agreement first becomes ~~binding upon the payee~~ *effective*, the
28 payee may cancel the transfer agreement without cost or further
29 obligation, by providing written notice of cancellation to the
30 transferee.

31 (3) The notice to interested parties shall include the effective
32 date of the transfer and identify the structured settlement payment
33 rights being transferred and the due dates of those payments.

34 (4) ~~Any~~ A notice required by this subdivision shall be deemed
35 to have been given if addressed to the recipient's last known
36 address and deposited, first-class postage prepaid, in the United
37 States mail not less than five calendar days prior to the date on
38 which the notice is required to be provided.

39 (c) The contract for transferring the structured settlement
40 payment rights does not violate the provisions of Section 10138.

1 SEC. 2. Section 10138 of the Insurance Code is amended to
2 read:

3 10138. (a) A transfer agreement, as defined in subdivision
4 (o) of Section 10134, shall not include any provision described in
5 the paragraphs below. Any inclusion of a prohibited provision;
6 ~~with respect to a seller who is a California resident~~, shall make the
7 contract void and unenforceable.

8 (1) ~~Any~~ A provision that waives the seller's right to sue under
9 any law, or in which the seller agrees not to sue, or that waives
10 jurisdiction or standing to sue under the contract.

11 (2) ~~Any~~ A provision that requires the seller to indemnify and
12 hold harmless the buyer, or to pay the buyer's costs of defense, in
13 any claim or action brought by the seller or on the seller's behalf
14 contesting the sale for any reason.

15 (3) ~~Any~~ A provision that waives benefits or rights conferred by
16 law with respect to garnishment of wages.

17 (4) ~~Any~~ A provision providing that the contract is confidential
18 or proprietary, belonging to the buyer.

19 (5) ~~Any~~ A provision in which the seller stipulates to a
20 confession of judgment.

21 (6) ~~Any~~ A provision requiring the seller to pay the buyer's
22 attorney's fees and costs if the purchase agreement is not
23 completed.

24 (7) ~~Any~~ A provision requiring the seller to pay any tax liability
25 arising under the federal tax laws, other than the seller's own tax
26 liability, if any, that results from the transfer.

27 (8) ~~Any~~ A provision providing for brokerage fees incurred in
28 the contract to be deducted from the purchase price disclosed
29 pursuant to paragraph (5) of subdivision (a) of Section 10136.

30 (9) ~~Any~~ A forum selection provision providing for jurisdiction
31 to be in a court outside of California for any action arising under
32 the contract.

33 (10) ~~Any~~ A choice-of-law provision that provides for
34 controlling law to be other than California law in any action arising
35 under the contract.

36 (11) A provision that provides the transferee with a security
37 interest or collateral interest in any structured settlement payment
38 rights that exceed the actual dollar amount of the structured
39 settlement payment rights being transferred.

1 (12) ~~Any~~ A provision that creates a “buyer’s first right of
2 refusal” to purchase any remaining structured payment rights that
3 the payee may desire to sell in the future.

4 (b) The provisions in this section may not be waived by
5 agreement of the parties.

6 SEC. 3. Section 10139 of the Insurance Code is amended to
7 read:

8 10139. (a) At the time notice is provided to interested parties
9 pursuant to subdivision (b) of Section 10136, or subdivision (c) of
10 Section 10137, or, when applicable, at the time of filing a petition
11 pursuant to paragraph (5) of subdivision (c) of Section 10139.5 for
12 court approval when court approval of the transfer agreement is
13 required, the transferee *of an initial transfer from a payee* shall file
14 with the Attorney General ~~a~~ *all of the following*:

15 (1) A copy of the transferee’s petition for approval, ~~a~~.

16 (2) A copy of the written disclosure statement required by
17 subdivision (a) of Section 10136, ~~a~~.

18 (3) A copy of the transfer agreement as defined in subdivision
19 (o) of Section 10134, ~~a~~.

20 (4) A copy of the annuity contract, ~~a~~.

21 (5) A copy of any qualified assignment agreement, ~~a~~.

22 (6) A copy of the underlying structured settlement agreement,
23 ~~a~~.

24 (7) A copy of any order or approval of any court or responsible
25 administrative authority authorizing or approving the structured
26 settlement, ~~a~~.

27 (8) A copy and proof of notice to the interested parties, ~~and a~~.

28 (9) A verified statement from the transferee stating that all of
29 the conditions set forth in Sections 10136, 10137, and 10138 have
30 been met.

31 (b) The Attorney General may, but is not required to, review
32 any transfer agreement in order to ensure that the transfer meets the
33 requirements of this article.

34 (c) The Attorney General may charge a reasonable fee for the
35 filing of the transfer agreement as provided in this section. The fee
36 shall be paid by the transferee.

37 SEC. 4. Section 10139.1 of the Insurance Code is amended to
38 read:

39 10139.1. ~~Any~~ *Except for the filing of documents with the*
40 *Attorney General, any* subsequent transfer of any additional

1 structured settlement payments between the payee and transferee
2 may be made only after compliance with all of the requirements
3 of this article.

4 SEC. 5. Section 10139.5 of the Insurance Code is amended to
5 read:

6 10139.5. (a) This section shall become operative only upon
7 enactment into law of amendments to the Federal Internal Revenue
8 Code to impose an excise tax on a transfer of structured settlement
9 payment rights if the transfer is not approved by a court.

10 ~~This section shall remain in effect only until January 1, 2005,~~
11 ~~and as of that date is repealed, unless a later enacted statute, that~~
12 ~~is enacted before January 1, 2005, deletes or extends that date.~~

13 (b) A direct or indirect transfer of structured settlement
14 payment rights is not effective and a structured settlement obligor
15 or annuity issuer is not required to make any payment directly or
16 indirectly to any transferee of structured settlement payment rights
17 unless the transfer has been approved in advance in a final court
18 order based on express findings by the court that:

19 (1) The transfer is in the best interest of the payee, taking into
20 account the welfare and support of the payee's dependents.

21 (2) The payee has been advised in writing by the transferee to
22 seek independent professional advice regarding the transfer and
23 has either received that advice or knowingly waived that advice in
24 writing.

25 (3) The transferee has provided the payee with a disclosure
26 form consistent with Section 10136 and the transfer agreement
27 complies with Section 10138.

28 (4) The transfer does not contravene any applicable statute or
29 the order of any court or other government authority.

30 (c) Following a transfer of structured settlement payment
31 rights under this article:

32 (1) The structured settlement obligor and the annuity issuer
33 shall, as to all parties except the transferee, be discharged and
34 released from any and all liability for the transferred payments.

35 (2) The transferee shall be liable to the structured settlement
36 obligor and the annuity issuer if the transfer contravenes the terms
37 of the structured settlement for the following:

38 (A) Any taxes incurred by those parties as a consequence of the
39 transfer.

(B) Any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by those parties with the order of the court or arising as a consequence of the transferee's failure to comply with this article.

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two, or more, transferees or assignees.

(4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this article.

(5) An application under this article for approval of a transfer of structured settlement payment rights shall be made by the transferee and brought in the county in which the payee resides if the payee is a resident of California. ~~If the payee is not a resident of California, the application for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought as follows:~~

~~(A) In the county in which the payee resides.~~

~~(B) In the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business.~~

~~(C) In any court that approved the structured settlement agreement.~~

(6) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under this article, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, and shall include *all of* the following with that notice:

(A) A copy of the transferee's application.

(B) A copy of the transfer agreement.

(C) A listing of each of the payee's dependents, together with each dependent's age.

(D) A copy of the disclosure required in subdivision (a) of Section 10136.

(E) A copy of the annuity contract.

(F) A copy of any qualified assignment agreement.

(G) A copy of the underlying structured settlement agreement.

(H) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either

1 in person or by counsel, by submitting written comments to the
2 court or by participating in the hearing.

3 (I) Notification of the time and place of the hearing and
4 notification of the manner in which and the time by which written
5 responses to the application must be filed, which may not be less
6 than 15 days after service of the transferee's notice, in order to be
7 considered by the court.

8 (7) All court costs and filing fees shall be paid by the transferee.

9 (8) No later than the time of filing the petition for court
10 approval, the transferee shall advise the payee of the payee's right
11 to seek counsel in connection with the transferee's petition for
12 court approval of the transfer agreement, and shall further advise
13 the payee that if the payee retains counsel *or a licensed certified*
14 *public accountant or licensed actuary* in connection with a petition
15 for an order approving the transfer agreement, that the transferee
16 shall pay the payee's counsel's fees, *or accountant or actuary fees*,
17 regardless of whether the transfer agreement is approved *and*
18 *regardless of whether the attorney, certified public accountant, or*
19 *actuary files any document or appears at the hearing in the*
20 *application for transfer*, in an amount not to exceed one thousand
21 five hundred dollars (\$1,500).

22 ~~(d) The transferee shall, within 30 days of obtaining final court~~
23 ~~approval, file with the Attorney General a copy of any final court~~
24 ~~order approving or denying the transfer of structured settlement~~
25 ~~payment rights. The transferee shall specify in written form the~~
26 ~~following information:~~

27 ~~(1) Whether the payee was represented by an attorney and the~~
28 ~~costs paid or owed to that attorney by the transferee and, if known,~~
29 ~~by the payee.~~

30 ~~(2) The county and judicial district where the court approval~~
31 ~~was filed.~~

32 ~~(3) For approved agreements, whether any changes were made~~
33 ~~to the transfer agreement.~~

34 ~~(4) For rejected agreements, the general category for the~~
35 ~~rejection.~~

36 ~~(5) The total court costs and attorney's fees paid by the~~
37 ~~transferor to obtain court approval.~~

38 ~~(6) The purchase prices of the transfer agreement and its~~
39 ~~effective interest rate.~~

1 ~~(c) Not later than March 31, 2004, the Attorney General shall~~
2 ~~file a report with the Legislature to assist in the evaluation of the~~
3 ~~impact of this section. The report shall include, based on~~
4 ~~information the Attorney General has received from transferees,~~
5 ~~the following:~~

6 ~~(1) The number of petitions filed.~~

7 ~~(2) The number of petitions approved without change.~~

8 ~~(3) The number of petitions approved with changes and the~~
9 ~~general category of the changes requested.~~

10 ~~(4) The number of petitions rejected and the general categories~~
11 ~~for rejection.~~

12 ~~(5) The range of purchase prices, mean purchase price, median~~
13 ~~purchase price, mean effective interest rate, and median effective~~
14 ~~interest rate.~~

15 ~~(6) The number of petitions in which the payee was represented~~
16 ~~by counsel, and if known, the amount of compensation paid to~~
17 ~~counsel by the transferee and the payee.~~

